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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JUN 10 2010

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 402.00-00

SE: T: EP: RA: J |

Legend:

- Taxpayer A =
- Company B =
- Plan C =
- Financial Institution D =
- Company E =
- IRA F =
- Amount 1 =
- Amount 2 =
- Amount 3 =

Dear :

This letter is in response to a request for a letter ruling dated April 8, 2010, as modified and supplemented by additional correspondence dated April 21 and 26, 2010, from your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code ("Code"), regarding the distribution of 9,385 shares of Company B stock from Plan C.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 51 at the time of distribution of 9,385 shares of Company B stock from Plan C, asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to Plan C's failure to provide proper written notice regarding the rollover rules and tax consequences of the distribution of Company B stock. Taxpayer A further represents that the 9,385 shares of stock have not been used for any purpose.

Taxpayer A's spouse participated in Plan C, a cash or deferred arrangement under sections 401(a) and 401(k) of the Code, maintained by Company B. Funds in Plan C were held by Financial Institution D. Taxpayer A represents that on September 24, 2008, she and her spouse were divorced. Pursuant to a community property settlement, a court, on June 18, 2009, issued a qualified domestic relations order (QDRO) awarding Taxpayer A a 50% interest in her former spouse's account balance in Plan C.

The Plan Administrator mailed Taxpayer A's attorney a letter dated August 27, 2009, which stated the QDRO satisfied the requirements of section 414(p) of the Code. On September 18, 2009, an account was established for Taxpayer A's share of Plan C. In mid-October of 2009, Taxpayer A requested a distribution of Amount 1. During her conversation with the Plan Administrator, Taxpayer A represents she was not informed of the policy of Plan C to automatically distribute full account balances to alternate payees 60 days after mailing an account information letter. Taxpayer A also represents she was not asked what she wanted done with the remaining balance in her account, nor was she told that if she took no action the balance would be distributed. On October 27, 2009, Taxpayer A received a distribution of Amount 1 from Plan C. Taxpayer A did not intend to rollover Amount 1.

Company E is the transfer agent for Company B's stock. Pursuant to established policy, if a participant or alternate payee is due a distribution of stock from Plan C, the Plan Administrator transmits electronic notice to Company E that it will transfer shares of stock in Plan C in their name. On December 4, 2009, the Administrator of Plan C notified Company E of a transfer of 9,385 shares of Company B stock in Plan C to Taxpayer A. On this same day, an account was set up for Taxpayer A by Company E and 9,385 shares of stock were transferred.

On February 1, 2010, Taxpayer A received a Form 1099-R reporting the 9,385 shares of Company B stock as a gross distribution of Amount 2 and a taxable distribution of Amount 3. Taxpayer A called the Plan Administrator and was informed that the shares had been distributed by way of Company E. Taxpayer A represents this was the first time she learned about the electronic transfer of the shares of stock and that Company E was holding them in her name in a non-IRA account. Taxpayer A did not discuss the transfer with Company E until after she called the Plan Administrator to inquire about the Form 1099-R.

At the time of the transfer of the 9,385 shares of stock, Taxpayer A represents she did not receive notice of the transfer by Company B, the Administrator of Plan C or Company E. The Plan Administrator stated that Taxpayer A should have been notified of the distribution policy. He believed Taxpayer A had been sent written notice of it (account information letter), but could not verify that this information was sent. Taxpayer A does not recall receiving notice of the distribution policy. After discussions with Company E, on March 19, 2010, the 9385 shares of Company B stock from Plan C were transferred to IRA F for the benefit of Taxpayer A.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 402(c)(3)(B) of the Code with respect to the distribution of 9,385 shares of stock.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) of the Code provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by

a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of 9,385 shares of Company B stock was due to Plan C's failure to provide proper written notice regarding the rollover rules and tax consequences of the distribution of Company B stock.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of 9,385 shares of Company B stock from Plan C. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the 9,385 shares of Company B stock contributed to IRA F, will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (I.D. #), at () .

Sincerely yours,

Carlton A. Wathen

Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: